

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: <i>Erisman, Terry</i>)	Examining Group 3624
)	
Serial No.: 09/560,203)	Examiner: Felten, Daniel S.
)	
Filed: 4/28/2000)	
)	
For: <i>Method & Apparatus for Auctioning</i>)	
<i>Items</i>)	

(Substitute) Appeal Brief filed under 37 C.F.R. § 1.192

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In furtherance of the Notice of Appeal filed March 6, 2007, and in response to the Notification of Non-Compliant Appeal Brief mailed August 3, 2007, Applicant submits this Substitute Appeal Brief under 37 C.F.R. § 41.37. To wit, the objections raised in the August 3 2007 communication have been addressed by: a) combining the Grouping of Claims section with the Arguments section; b) Listing the appropriate status of the claims in the Appeal, and identifying the claims involved in the Appeal.

A petition and fee for a one month extension of time is also enclosed. Please charge any fees due to deposit account no. 501- 244.

A short introduction of the prosecution history is first presented. This brief also contains the following sections as required by 37 C.F.R. § 41.37 and MPEP § 1206:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims
- IX. Evidence
- X. Related Proceedings
- Appendix A Claims

BRIEF INTRODUCTION AND REVIEW OF PROSECUTION HISTORY

1. The present application was filed on April 28, 2000 with claims 1 – 102.
2. A first Office Action mailed November 8, 2002 by Examiner Akers rejected the claims under §103 based on Mori (US Patent No. 6,044,363) in view of Barzilai (US Patent No. 6,012,045) in view of Godin (US Patent No. 6,266,652) and further in view of Aggarwal (US Patent No. 6,151,589). No other rejection was issued.
3. A first Amendment and Response was filed on March 10, 2003. Each of the independent claims was amended in some fashion to distinguish over the prior art of record. With respect to claim 1, for example, the Applicant noted that it had been amended to recite that:

....said bidder can specify that a set of ranked bids submitted by each bidder for a set of items should be treated as mutually exclusive....

An explanation of this significance was given in the Remarks section at pages 28 – 29. The other distinctions for the other independent claims were also elaborated.

4. In a second Office Action mailed May 20, 2003, Examiner Akers repeated and maintained the rejections of the first Office Action. Notably, while purporting to address Applicant's arguments provided concerning claim 1, he seemed to ignore the amendments made to the claims concerning "mutually exclusive" bids, and reiterated that he believed Mori disclosed "bid ranking." Nor was any discussion provided by the Examiner of any of the points raised by the Applicant to distinguish claims 2 – 102.
5. The Applicant then submitted Response B After Final on July 21, 2003. The Applicant pointed out that the Examiner had not apparently considered the amendments to the claims, and asked for reconsideration. Moreover the Applicant discussed the Mori reference at length, particularly as concerned the lack of teaching of a ranking or mutual exclusiveness of bids.
6. An Advisory Action mailed on August 8, 2003 repeated the rejections with a single line that reads:

No material arguments have been advanced over what has been considered.

The meaning of this third Office Action is unclear since the Applicant submitted 3 full pages of further clarifications in Response B to the Mori reference.
7. A Request for Continued Examination was filed on September 22 2003. No amendment was provided at that time.
8. A fourth Office Action was mailed on November 10, 2003. In this document the Examiner repeated the rejections based on Mori, and for the first time provided somewhat more details specifying the rejections of claims 6, 27, 51 and 57. The Examiner also cited Rackson (US Patent No. 6,415,270) for the first time against claim 27, although it is challenging to decipher what other limitations/claims are implicated by the Examiner's discussion on pages 4 – 5.
9. Because it was apparent that there were significant gaps in understanding and perspectives on the claims and references, the undersigned requested and participated in a telephonic interview with the Examiner on March 5, 2004. At the

interview the parties discussed a number of the pending claims and options for clarifying the language to distinguish over the references.

10. After the interview the Applicant then submitted a further Amendment C on March 8, 2004. In this filing the claims were amended pursuant to the understandings achieved with the Examiner, including the following amendment made to claim 1 to better define the nature of the mutually exclusive language:
“...further wherein said bidder can specify that a set of ranked bids submitted by such bidder for a set of items should be treated as mutually exclusive, such that the electronic auction determines at most a single item to be awarded to such bidder from said set of ranked bids by correlating a ranking relationship between separate items bid on by said bidder.”
11. Independent claims 11, 23, 27 30, 34, 37, 44, 65, 71, 76, 81, 82, 83, 84, 88, 92 and 94 were also amended. The distinctions over Mori were then discussed at pages 31 – 34 of the amendment. Barzilaj was discussed at length at page 34. Rackson was distinguished on pages 35 – 36. Finally the operation of the Aggarwal reference auction and the differences to the pending claims was explained on pages 36 – 37.
12. At this time the examination was taken over by Examiner Felten, who issued a fifth Office Action on June 2 2004 repeating the pre-interview rejections made by Examiner Akers. However the new Examiner also extended the application of the Rackson reference to reject claim 1 and the other independent claims. See June 2 2004 Office Action, page 4. Until that time Rackson had only been specifically applied to claim 27. The action was made final.
13. Response D was filed (after Final) on August 20 2004. The Applicant pointed out the discrepancies in the application of the Rackson reference, and the apparent lack of evidence on the record to support the new rejection proposed in the June 2004 Final Office action. The Rackson reference was then further distinguished.
14. A restriction requirement was then issued on March 28, 2005. In response to such the Applicant elected to prosecute the claims of Group I, which included 1 –

10, 37 – 70, 76 – 81, 85 – 87 and 94 – 102. The Finality of the prior office Action was also withdrawn as the Examiner acknowledged the new application of Rackson.

15. On August 11, 2005 – more than 5 years post filing and after 5 substantive Office Actions - the Examiner made a request under 37 C.F.R. 1.105 for further information on a number of different items pertaining to the claims. Despite the fact that the Applicant did not agree with the need for such type of materials at such an advanced stage of prosecution, a detailed response to this request was provided on November 10 2005.

16. A sixth Office Action mailed on January 27 2006 withdrew the rejections based on Rackson but yet instituted new rejections based on the Lange (US Patent No. 6,321,212) reference. In the Examiner's view Lange discloses an embodiment: ...where bidders (firms) can specify that a set of ranked bids submitted by such bidder for a set of items should be treated as mutually exclusive (see col. 58, ll. 47 to col. 59, ll. 4)...

According to the Examiner the motivation to combine Lange with the other prior art references would result from a desire to invest in the distribution of possible outcomes rather than simply waiting for a single outcome representing the auction result. See page 3 of the January 27 Office Action.

17. A response to the sixth Office Action was mailed on June 26 2006. Because Lange formed the primary basis for the new rejections, the Applicant devoted the bulk of the discussion to explaining the differences over such reference. See pages 2 – 3.

18. A seventh Office Action made Final was mailed on September 11 2006. The rejections made based on Lange taken with Mori, Barzilai, Godin and Aggarwal were repeated. Aside from a single sentence spanning pages 2 – 3, there is no

discussion of the detailed rebuttal of Lange presented by Applicant in the June 26 2006 filing.

19. Another response was filed on November 13 2006 to the aforementioned seventh and final Office Action. The Applicant provided yet another explanation of the key differences over Lange, particularly the claim limitations discussing “bids,” “mutually exclusive,” “ranking” and related language.

20. Because an Advisory Action mailed December 12, 2006 repeated the prior rejections, the Applicant filed the present appeal.

I. REAL PARTY IN INTEREST

John Nicholas Gross, residing at 3883 18th Street, San Francisco, CA 94114, by way of an assignment dated May 14 2007 and which is recorded at Reel/Frame 019500/0590.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences or judicial proceedings known to Appellant, Appellant's legal representative, or the Assignee of the present application which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1 – 10, 37 - 70, 76 – 81, 85 – 87 and 94 – 102 are involved in the present appeal and are the only claims pending. All claims stand rejected under 35 U.S.C § 103. Claims 1, 6, 37, 44, 51, 57, 65, 76, 81, 85 and 94 are independent. A complete copy of the pending claims is provided in Appendix A.

IV. STATUS OF AMENDMENTS

There is no amendment which has not been entered in this case.

V. SUMMARY OF CLAIMED SUBJECT MATTER

It should be appreciated that due to limitations of space the citations below are merely representative and not intended to be exhaustive of all areas of the disclosure which pertain to the identified limitations of the claims.

A. Independent claim 1

Independent claim 1 recites a method of processing bid information for an electronic auction comprising the steps of:

- (a) providing a database of items available for auction; (FIG. 1 auction database 165; pages 18 – 19, particularly page 18, l. 3; page 19, ll. 15-16;)
- (b) receiving a set of bids from one or more bidders for a corresponding set of items selected from said database, each bid in said set of bids including at least a bid price and a bid ranking specified by a bidder for an item; (FIG. 2 box 205; FIG. 1B, items 188b and 189 and accompanying discussion in text; FIG. 3 Bid Table and accompanying discussion in text; see also page 20, ll. 17 – 22; and discussion spanning pages 20 – 21; page 25, l. 23 – page 26, l. 25; FIG. 8, fields 848, 849 and discussion at page 35, l. 7 – 21)

wherein said bid ranking from said bidder for an item represents a desired order in which a bid is to be resolved in the electronic auction compared to any other bids made by such bidder for other items in said database of items; (see above as well as page 26, l. 4 discussing rank column 320)

further wherein said bidder can specify that a set of ranked bids submitted by such bidder for a set of items should be treated as mutually exclusive, such that the electronic auction determines at most a single item to be awarded to said bidder from said set of ranked bids by correlating a ranking relationship between separate items bid on by said bidder. (FIG. 2 box 210; FIG. 3; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)

B. Independent claim 6

Independent claim 6 recites a method of monitoring bid information for an electronic auction comprising the steps of:

- (a) retrieving a set of items from an auction database in accordance with a specified search criteria; (FIG. 6 and accompanying discussion in text at page 33, ll. 6 - 20; FIG. 7 and accompanying discussion in text at pages 33 – 34; FIG. 10 box 1020 and discussion at page 37, ll. 6 - 24; see also pages 18, ll. 21 – 24;)

- (b) displaying said set of items; (see above, particularly item 1020 in FIG. 10; and visible search results shown in FIG. 7)
- (c) for each item in said set of items, displaying a current highest unconditional bid price specified by a bidder and information relating to any conditional bids specified by other bidders for said item; (see above and page 28, ll. 25 – 30; page 31, ll. 21 – 24; FIG. 8, field 846 and discussion spanning pages 35 – 36)

wherein said conditional bids are not considered by an auction processing engine until and unless they become unconditional bids during an auction period associated with said item. (See FIG. 2, item 210; and discussion at pp. 21 – 22; and page 22, ll. 16 – 20; page 26, ll. 8 – 15; FIG. 5 discussion spanning pages 29 – 31).

C. Independent claim 37

Independent claim 37 recites a method of conducting an electronic auction comprising the steps of:

- (a) compiling a database of items available for auction; (FIG. 1 auction database 165; pages 18 – 19, particularly page 18, l. 3; page 19, ll. 15-16;)
- (b) grouping said items based on a common auction period to create a set of common items available to a plurality of purchasers for bidding; (FIG. 9 and accompanying discussion in text at pages 35 – 36;)
- (c) receiving bids for said set of common items from said plurality of purchasers, said bids including at least a bid price and a bid ranking specified by a purchaser for an item, said bids being comprised of separate sets of mutually exclusive bids from each of said plurality of purchasers for separate and mutually exclusive items; (see discussion above, including FIG. 2 item 205; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)
- (d) processing said separate sets of mutually exclusive bids based on both said bid price and said bid ranking specified by said purchaser for said set of common items to determine winning bids for each item in said set of common items by correlating a ranking relationship between bids for separate items made by such purchasers. (FIG. 2 – operation of auction process engine – and accompanying discussion at page 21, l. 21 to page 25, l. 23).

D. Independent claim 44

Independent claim 44 recites a method of conducting an electronic auction of a group of items within a predetermined auction time period, comprising the steps of:

- a) receiving a plurality of bids from a plurality of potential purchasers, said plurality of bids each including a bid price for an item in the group and a bid ranking specified by a purchaser for said item; (see discussion above, including FIG. 2 item 205; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)
- b) examining said bids to create a set of active bids for said item, said set of active bids being comprised only of bids having a highest bid ranking specified by a purchaser for said item and corresponding to a subset of said plurality of bids from a subset of said plurality of potential purchasers; (FIG. 2 item 210 and accompanying discussion at page 21, l. 21 to page 25, l. 23).
- c) creating an ordered set of active bids for said item based on a bid price provided for said bid; (FIG. 2 item 215 and accompanying discussion at page 21, l. 21 to page 25, l. 23).
- d) determining a minimum winning bid for said item by examining said ordered set of active bids; (FIG. 2 item 217 and accompanying discussion at page 21, l. 21 to page 25, l. 23).
- e) notifying a corresponding one potential purchaser from said subset of potential purchasers when an associated active bid for said item from said potential purchaser has an associated active bid price below said minimum winning bid; (FIG. 2 item 230 and accompanying discussion at page 21, l. 21 to page 25, l. 23).
- f) setting a selected active bid in said ordered set of active bids as a winning bid for said item when said selected active bid exceeds said minimum winning bid; (FIG. 2 item 225 and accompanying discussion at page 21, l. 21 to page 25, l. 23)

wherein a potential purchaser can specify that any bids be treated as mutually exclusive so that only one of said bids is satisfied for said potential purchaser by correlating a ranking relationship between separate items bid on by such potential purchaser. (FIG. 2 – operation of auction process engine – and accompanying discussion at page 21, l. 21 to page 25, l. 23).

E. Independent claim 51

Independent claim 51 recites a method of conducting an electronic auction for an item comprising the steps of:

- (a) receiving a plurality of bids from a plurality of potential purchasers for the item, said plurality of bids each including a bid price and a bid ranking specified by the purchasers for the item; (see discussion above, including FIG. 2 item 205; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)
- (b) sorting said plurality of bids to form a set of active bids for the item, said set of active bids for the item including only those bids in which a potential purchaser designated said bid for said item with a highest bid ranking among all bids submitted by said potential purchaser; (see discussion above, including FIG. 2 item 215; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28; see also page 22, ll. 18 – 20;)
- (c) determining a winning bid for said item by referring only to said set of active bids associated with said item. (see discussion above, including FIG. 2 item 225, 260; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)

F. Independent claim 57

Independent claim 57 recites a method of conducting an electronic auction for an item comprising the steps of:

- (a) identifying a set of highest ranked bids from bids made by bidders for the item; wherein a highest ranked bid corresponds to a bid specified by a bidder as a highest ranked bid compared to bid rankings specified by a bidder for other bids made by said bidder; (see discussion above, including FIG. 2 item 205; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)
- (b) designating said set of highest ranked bids as active bids for said bidders; (see discussion above, including FIG. 2 item 215; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28; see also page 22, ll. 18 – 20;)
- (c) determining whether any of said active bids are a potential winning bid for the item by comparing said active bids against each other and any previously determined winning bid; (see discussion above, including FIG. 2 item 220; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)

- (d) designating any active bid that is a potential winning bid as a winning bid; (see discussion above, including FIG. 2 item 225; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)
- (e) deleting any active bids that are not designated as a winning bid; (see discussion above, including FIG. 2 item 238; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)
- (f) repeating steps (c) to (e) during an auction period until no active bids remaining that are higher than said winning bid. (see above and operation of preferred process shown in FIG. 2)

G. Independent claim 65

Independent claim 65 recites a method of conducting an auction comprising the steps of:

- a. receiving a listing of a plurality of mutually exclusive items from a plurality of sellers; (FIG. 9 and accompanying discussion in text at pages 35 – 36;)
- b. receiving a plurality of ranked bids from a plurality of users on said plurality of mutually exclusive items; (see discussion above, including FIG. 2 item 205; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)
wherein each user submits a plurality of mutually exclusive bids so that such user is given an option of only securing one of such mutually exclusive items based on correlating a ranking relationship between said plurality of ranked bids made on separate items bid on by such user; (FIG. 2 box 210; FIG. 3; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)
- c. identifying a plurality of highest ranked bids, said highest ranked bids being specified by each of said plurality of users for one of their bids in their plurality of mutually exclusive bids; (FIG. 2 item 210 and accompanying discussion at page 21, l. 21 to page 25, l. 23).
- d. tagging said plurality of highest ranked bids as active bids; (FIG. 2 item 210 and accompanying discussion at page 21, l. 21 to page 25, l. 23).
- e. using only said active bids to determine a plurality of preliminary winning bids for said plurality of mutually exclusive items; (FIG. 2 item 225 and accompanying discussion at page 21, l. 21 to page 25, l. 23).

- f. tagging said plurality of preliminary winning bids; (id)
- g. eliminating all non-winning bids; (see discussion above, including FIG. 2 item 238; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)
- h. identifying a plurality of next highest ranked bids as specified by said plurality of users for each of said plurality of users not obtaining a winning bid; (see discussion above, including FIG. 2 item 240; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)
- i. designating said plurality of next highest ranked bids as active bids; (id)
- j. comparing only said active bids and said winning bids; (see discussion above, including FIG. 2 item 210, 215, 217, 220; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)
- k. identifying a new preliminary winning bid for each of the plurality of mutually exclusive items and tagging said new preliminary winning bid; (see discussion above, including FIG. 2 item 225; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)
- l. processing said plurality of ranked bids during a bidding period until all of said plurality of users have either a winning bid or no remaining active bids; (see discussion above, including FIG. 2 item 250, 255; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)
- m. transmitting the results of the auction to said plurality of users. (see discussion above, including FIG. 2 item 260; 230; and accompanying discussion at page 21, l. 21 to page 25, l. 23;)

H. Independent claim 76

Independent claim 76 recites a system for conducting an electronic auction of items comprising:

- (a) an auction controller accessible by a number of bidding computing systems; (FIG. 1 item 100 and accompanying discussion at page 17, l. 23 to page 19, l. 25);
- (b) an auction inventory database accessible by said auction controller, and being adapted to store identifying information for the items; and (FIG. 1 item 165 and accompanying discussion at page 17, l. 23 to page 19, l. 25);
- (c) an auction bid database accessible by said auction controller, and being adapted to store information for bids on the items, each of said bids including both a bid price and a bid ranking specified by a bidder for an item, said bid ranking corresponding to a desired order in which a bid is to be resolved compared to any other bids made by such bidder for other items in said database of items; (id; FIG. 2 box 205; FIG. 1B, items 188b and 189 and accompanying discussion in text; FIG. 3 Bid Table and accompanying discussion in text; see also page 20, ll. 17 – 22; and discussion spanning pages 20 – 21; page 25, l. 23 – page 26, l. 25; FIG. 8, fields 848, 849 and discussion at page 35, l. 7 – 21)

said auction controller being configured such that it processes said bids for said items in accordance with both said bid price and said bid ranking specified by a bidder for said items and such that said bidder's ranked bids for any of the items can be treated as mutually exclusive by correlating a ranking relationship between ranked bids made on separate items bid on by such bidder. (Id.)

I. Independent claim 81

Independent claim 81 recites a system for conducting an electronic auction of items comprising:

- (a) an electronic auction file for storing information concerning auction items; (FIG. 1 item 165 and accompanying discussion at page 17, l. 23 to page 19, l. 25);
- (b) an electronic bid file for storing a set of bids for a corresponding set of items selected from said auction file, each bid in said set of bids including at least a bid price and a bid ranking specified by a bidder for an item; (id; FIG. 2 box 205; FIG. 1B, items 188b and 189 and accompanying discussion in text; FIG. 3 Bid Table and accompanying discussion in text; see also page 20, ll. 17 – 22; and discussion spanning pages 20 – 21; page 25, l. 23 – page 26, l. 25; FIG. 8, fields 848, 849 and discussion at page 35, l. 7 – 21)
- (c) an electronic auction processor for processing said set of bids based on both said bid price and said bid ranking specified by bidders for said corresponding set of items to determine if there is at least one winning bid for one of said corresponding set of items; and (FIG. 1 item 100 and accompanying discussion at page 17, l. 23 to page 19, l. 25);

wherein a single bidder can bid on more than one item in the electronic auction, but said electronic auction processor can be programmed to only generate at most a single winning bid for said single bidder by correlating a ranking relationship between bids made on separate items bid on by such single bidder. (FIG. 2 box 210; FIG. 3; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)

J. Independent claim 85

Independent claim 85 recites an electronic auction program for processing auction bids for an item comprising:

(a) a first program portion for identifying a set of highest ranked bids from bids made by bidders for the item, and for designating said set of highest ranked bids as active bids for said bidders; (FIG. 2 item 210 and accompanying discussion at page 21, l. 21 to page 25, l. 23; see also pages 36 - 37)

wherein a highest ranked bid from a bidder corresponds to a bid specified by the bidder as a highest ranked item compared to rankings for other items which bidder is bidding on; (FIG. 1B, items 188b and 189 and accompanying discussion in text; FIG. 3 Bid Table and accompanying discussion in text; see also page 20, ll. 17 – 22; and discussion spanning pages 20 – 21; page 25, l. 23 – page 26, l. 25; FIG. 8, fields 848, 849 and discussion at page 35, l. 7 – 21)

(b) a second program portion for determining whether any of said active bids are a potential winning bid for the item by comparing said active bids against each other and any previously determined winning bid; (see discussion above, including FIG. 2 item 220; and accompanying discussion at page 21, l. 21 to page 25, l. 23; see also pages 36 – 37)

(c) a third program portion for designating any active bid that is a potential winning bid as a winning bid; (see discussion above, including FIG. 2 item 225; and accompanying discussion at page 21, l. 21 to page 25, l. 23; see also pages 36 – 37)

(d) a fourth program portion for deleting any active bids that are not designated as a winning bid; (see discussion above, including FIG. 2 item 238; and accompanying discussion at page 21, l. 21 to page 25, l. 23; see also pages 36 – 37)

(e) a fifth program portion for coordinating said first program portion, said second program portion, said third program portion and said fourth program portion during an auction period until no active bids remain that are higher than said winning bid; (see above and operation of preferred process shown in FIG. 2 including items 250, 255)

wherein only bidders for which the item is a highest ranked bid are considered for potential winning bids on the item. (see discussion above, including FIG. 2 item 215; FIGs. 3 – 4; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28; see also page 22, ll. 18 – 20)

K. Independent claim 94

Independent claim 94 recites an electronic auction system comprising:

- a. means for entering auction inventory items; and (FIG. 9 and accompanying discussion in text at pages 35 – 36;)
- b. means for storing said auction inventory items; and (FIG. 1 item 165 and accompanying discussion at page 17, l. 23 to page 19, l. 25);
- c. means for reviewing said auction inventory items; and (FIG. 6 and accompanying discussion in text at page 33, ll. 6 - 20; FIG. 7 and accompanying discussion in text at pages 33 – 34; FIG. 10 box 1020 and discussion at page 37, ll. 6 - 24; see also pages 18, ll. 21 – 24;)
- d. means for querying said auction inventory items to create selected auction inventory items satisfying selection criteria of a potential bidder; (Id., particularly FIG. 7 and accompanying discussion)
- e. means for entering a bid amount and a bid ranking specified by a bidder for one or more of said selected auction inventory items to create one or more bid entries; (Id; particularly FIG. 8 and accompanying discussion)
- f. means for storing said bid entries; (FIG. 1 auction database 165; pages 18 – 19, particularly page 18, l. 3; page 19, ll. 15-16)
- g. means for processing said bid entries to determine winning bids for said auction inventory items, said winning bids being based on both said bid amount and said bid ranking; (FIG. 2 – operation of auction process engine – and accompanying discussion at page 21, l. 21 to page 25, l. 23; see also pages 36 - 37).

wherein a bidder can specify that a set of bids submitted by such bidder for a set of items in said auction inventory items should be processed as mutually exclusive by specifying that a ranking relationship should be correlated between separate bids made by such bidder on separate items; (FIG. 2 box 210; FIG. 3; page 17, ll. 17 – 22; discussion spanning pages 26 – 27; page 32, ll. 18 – 28)

- h. means for transmitting a notification associated with said winning bids to one or more bidders. (FIG. 1 email processor 175; FIG. 2 items 230; 260 and accompanying associated discussion; FIG. 7, particularly field 745)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented for appeal are whether the above claims are unpatentable under § 103 in light of Mori (U.S. Patent No. 6,044,363) in view of Barzilai (US Patent No. 6,012,045) in view of Godin (6,266,652) in view of Aggarwal (U.S. 6,151,589) in view of Lange (U.S. No. 6,321,212). The Examiner is relying on the arguments made in the prior Office Actions dated May 16, 2003 (mailed May 20, 2003) and October 31, 2003 (mailed November 10, 2003). See Office Action mailed 9/11/06, page 3.

VII. ARGUMENT

The claims do not stand or fall together because they are directed to different facets of the present inventions and/or are more particularly directed to specific features of such inventions. A detailed discussion of such differences is given below.

A. Independent claim 1 and claims 2 – 5 depending therefrom

The main basis for the rejection of method claim 1 appears to be this argument from the Office:

The prior art fails to teach wherein said bidder can specify that a set of ranked bids submitted by such bidder for a set of items should be treated as *mutually exclusive*. Lange discloses an embodiment where bidders (firms) can specify that a set of ranked bids submitted by such bidder for a set of items should be treated as *mutually exclusive* (see Lange, col. 58, ll. 47 to col. 59, ll. 4). An artisan at the time of Mori in view of Barzilia (US 6,012,045) in view of Godin (6,266,652) in view of Aggarwal would have been motivated to provide the aforementioned feature so as to allow those willing to participate in the auction to invest in the distribution of possible outcomes rather than simply waiting for the single outcome representing the auction result. Thus auction participants could thus hedge themselves against adverse auction developments and have

access to the entire probability of bids and also avoid “Winner’s Curse”, as enunciated in Lange. Thus such a feature would be an obvious expedient well within the ordinary skill in the art.

See Office Action of January 27, 2006. Thus at this time all prior rejections and arguments concerning claim 1 have been withdrawn by the Office, and Lange is the only reference relied upon as disclosing these aspects of claim 1. The main issues, therefore, are whether Lange indeed discloses an embodiment in which "...bidders (firms) can specify that a set of ranked bids submitted by such bidder for a set of items should be treated as mutually exclusive..."

Fundamentally there are at least three flaws in this characterization of Lange. First, Lange does not appear to disclose "bids" or "bidders" for items in an electronic auction. As Applicant interprets this reference, Lange is an investment system which allows entities to hedge their bets by investing "...in the distribution of possible auction outcomes." Lange, Col. 58, ll. 55+. Thus, Lange's participants do not provide bids for items in an auction; instead they hedge against the outcome of the auction.

Here is what Lange discloses in the section noted by the Examiner:

....Groups of DBAR contingent claims according to the present invention can also be used to hedge arbitrary sources of risk due to price discovery processes. For example, firms involved in competitive bidding for goods or services, whether by sealed bid or open bid auctions, can hedge their investments and other capital expended in preparing the bid *by investing in states of a group of DBAR contingent claims* comprising ranges of mutually exclusive and collectively exhaustive auction bids. In this way, *the group of DBAR contingent claim serves as a kind of "meta-auction,"* and allows those who will be participating in the auction to invest in the distribution of possible auction outcomes, rather than simply waiting for the single outcome representing the auction result. Auction participants could thus hedge themselves against adverse auction developments and outcomes, and, importantly, have access to the entire probability distribution of bids (at least at one point in time) before submitting a bid into the real auction. Thus, a group of DBAR claims could be used to provide market data over the entire distribution of possible bids. Preferred embodiments of the present invention thus can help avoid the so-called Winner's Curse phenomenon known to economists, whereby auction participants fail rationally to take account of the information on the likely bids of their auction competitors. (emphasis added)

Note how Lange clearly distinguishes the bids made in the underlying auction from the DBAR contingent claims which form the basis of his invention. The latter are used to potentially cover the entire gamut of auction outcomes, but they are not "bids" of any kind.

This then points out the second fundamental flaw in Lange; namely, there is no mention of any kind of providing a "bid ranking". As set out in claim 1, the bid ranking

“...represents a desired order in which a bid is to be resolved in the electronic auction compared to any other bids made by such bidder for other items...”

The analogy drawn by the Examiner to Lange begins to fall apart very rapidly. Since there are no bids in Lange, there is similarly no mention of this type of bid ranking as set out in claim 1, which calls for the electronic auction to resolve the bidder's bids in a desired order.

Moreover, the excerpt from Lange reveals the third flaw in this reference: it is clear that Lange is not disclosing an embodiment in which one enters bids for separate items which are mutually exclusive. Lange simply allows for investing in a “distribution of possible auction outcomes,” which he explains should be ranges of mutually exclusive and collectively exhaustive auction bids for an item. However the fact that Lange lets investors invest in multiple auction outcomes for a single item is not the same as allowing bidders to place mutually exclusive bids in an auction across separate items.

It seems to the Applicant that the Examiner misapprehends the term “mutually exclusive” as it is used in connection with the auction ranges discussed in Lange. This is simply referring to the fact that there are no overlapping ranges; for example, an auction outcome for a single item might be represented by the following “mutually exclusive” ranges: 0 – 10; 11 – 20; 20 – 30; 30+, etc. (four separate ranges). According to Lange, one could invest in DBAR claims for all four, if desired. However, if a person were to do so, one would have to pay for all four DBAR claims covering each of the four ranges. Moreover, Lange says nothing about allowing a user to invest in DBAR claims in a manner that is mutually exclusive as between separate items. That is, for 2 separate items, the user in Lange must pay for DBAR claims in ranges for both; he/she is not given the option of only hedging on the outcome of one of the items.

In short, since Lange does not in fact contain the disclosure necessary to support a finding of obviousness, the present rejection cannot be sustained. Given there is a complete lack of evidence, the present record cannot meet the criteria needed for a prima facie case of obviousness, and, in that case, the present rejections should be overturned. See e.g., In re Neilson, 816 F.2d 1567, 1572, 2 USPQ 2d 1525, 1528 (Fed. Cir. 1984); In Re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Claims 2 – 5

Dependent claims 2 – 5 should be allowable for at least the same reasons as claim 1. Moreover, claim 2 is patentable on additional grounds, including the fact that the prior art does NOT teach or suggest “.. a set of bids from any particular bidder each include a unique bid ranking” for each of said corresponding set of items.

The Applicant also notes that claim 4 is separately allowable. The prior art does not provide any description of “conditional” bids as set out in this claim. The Barzilai reference cited by the Office (at col. 13, ll. 26+) merely shows unconditional bids from other parties; there is no indication anywhere that these are conditional bids of the type disclosed in the present application. Furthermore the Mori reference does not show conditional bids as explained below in connection with claim 6.

B. Independent claim 6 and claims 7 – 10 depending therefrom

The rejection of method claim 6 appears to be based on arguments raised in the Office Action that both Mori and Barzilai teach some form of conditional and unconditional bidding. Looking at both references carefully it can be seen that this is not true; moreover, the Examiner has not considered the related limitations in the claim which further distinguish over such references.

In particular, the Examiner cites to col. 13, ll. 30 – 50 of Barzilai as supporting evidence for conditional bids; however, as the Board can plainly ascertain, there is nothing in that section (or anywhere else that the Applicant can determine) to support a finding that it is disclosing a condition bid of the type set out in claim 6:

....for each item in said set of items, displaying a current highest unconditional bid price specified by a bidder *and information relating to any conditional bids* specified by other bidders for said item;
wherein said *conditional bids are not considered by an auction processing engine until and unless they become unconditional bids* during an auction period associated with said item.

The parameters of the conditional/unconditional bids are thus well set out in the claim; yet Applicant does not find anything in the reference which remotely discusses this type of method.

Similarly the Mori reference is also lacking. The excerpts cited by the Examiner (FIG. 4, item 314; FIG. 5, item 425 and FIG. 7, item 612) are apparently discussing a

much different subject. Nonetheless, even if the Examiner were correct, the fact is that Mori does not disclose the limitation of the claim reciting “...displaying a current *highest unconditional bid price* specified by a bidder and *information relating to any conditional bids specified by other bidders* for said item..” Even if the “rules” in Mori shown in FIG. 4 can be considered bids (which the Applicant does not concede) the reality is that the system there only shows each user his/her own unique rules. There is no information provided concerning displaying rules from other bidders.

The difference is significant because by allowing bidders to see so-called “conditional” bids for an item, this helps to stimulate bidding for such item. For example, if a user has entered an unconditional bid for an item, but then notices that a conditional bid is higher than his/her bid, this can act as a motivator for such user to increase their bid. This is but an example, of course and it can be seen that that other similar scenarios are embodied by the claim.

As with claim 1 therefore, Applicant submits that this claim is patentable over the references of record.

Dependent claims 7 – 10

Dependent claims 7 – 10 should be allowable for at least the same reasons as claim 6. Moreover, these claims are patentable on additional grounds, including the fact that the prior art does NOT teach or suggest “.. a common auction period” (claim 7); or that a numerical value indicating a number of conditional bids is displayed (claim 8).

Independent claim 37 and claims 38 - 43 depending therefrom

Independent method claim 37 should be allowable for at least the same reasons as set out above for claim 1, particularly the discussion pertaining to bids, bid rankings, and mutually exclusive bids. Moreover, from Applicant's review of the references, the Office has still not identified which reference discloses the second limitation of claim 37, namely:

"...(b) grouping said items based on a common auction period to create a set of common items available to a plurality of purchasers for bidding..."

This aspect of the invention is discussed in the specification at pages 18 – 19. By identifying and grouping items based on a common auction period, it makes it easier for participants to rank their bids and know they will be resolved within the same time period. The Office has not identified on the record where such disclosure is to be found in the references.

Dependent claims 38 – 43

Dependent claims 38 - 43 should be allowable for at least the same reasons as claim 37. Moreover, these claims are patentable on additional grounds, including the fact that the prior art does NOT teach or suggest *".. comparing bids...in an order determined by said bid ranking..."* (claim 39); or that the auction proceeds by examining highest ranked bids, not highest price bids (claim 40).

C. Independent claim 44 and claims 45 – 50 depending therefrom

Independent method claim 44 should be allowable for at least the same reasons as set out above for claims 1 and 37, particularly the discussion pertaining to bids, bid rankings, and mutually exclusive bids. Moreover, from Applicant's review of the references, the Office has still not identified which reference discloses the second limitation of claim 37, namely:

"...(b) create a set of active bids....being comprised only of bids having a highest bid ranking specified by a purchaser for said item..."

The embodiments covered by this claim pertain more specifically to those in which the different users' subjective rankings for the item are considered in resolving

the auction. The Office has not identified on the record where such disclosure is to be found in the references.

Dependent claims 45 - 50

Dependent claims 45 - 50 should be allowable for at least the same reasons as claim 37. Moreover, these claims are patentable on additional grounds, including the fact that the prior art does NOT teach or suggest “.. selecting a next highest ranking bid as an active bid for a different item in the group...” (claim 46); or that “...all the items in the group are auctioned substantially simultaneously..” (claim 49) or that the user “.. receives a single winning bid at most for items having different auction expiration periods” (claim 50).

D. Independent claim 51 and claims 52 – 56 depending therefrom

Independent method claim 51 should be allowable for at least the same reasons as set out above for claims 1 and 37, particularly the discussion pertaining to bids, bid rankings and active bids. The prior art has been discussed above, but a further explanation of the latter terms is appropriate for claim 51 which has slightly different phraseology.

The Examiner believes that Mori has a bid “ranking” for different bids but this is not quite accurate. Mori simply allows the user to specify a set of potential rules (313) to be used when bidding on a particular item 312. See col. 6, ll. 17 – 31. Mori does not give the user the option of providing a different bid ranking for different items. Thus, it cannot possibly disclose the limitation of forming a set of active bids “...including only those bids in which a potential purchaser designated said bid for said item with a highest bid ranking among all bids submitted by said potential purchaser...” Stated another way, Mori states that all of the rules for each member are considered for a product; if this is true, then it cannot be forming active bids by including only the highest bid rankings.

Similarly the Examiner continues to maintain that Aggarwal discloses bid ranking. It does not. To begin with, Aggarwal explicitly indicates that when auctioning an item, the “premium” bidders are first identified. But, according to Aggarwal, such bidders are

specified solely based on a bid “price” they have provided. Clearly this is not the same as considering a bid “ranking” identified by a bidder as set out in claim 51.

Demonstrative Auction Table as handled by Aggarwal

ITEM	BIDDER		
	A	B	C
X	10	5	8
Y	15	10	3
Z	3	2	1

The universe of bidders considered by Aggarwal for each item are noted in **bold**. Thus, in the Aggarwal handling of the auction process, Bidders A and C would be considered for item X (if the threshold for premium bidders is 8) and Bidders A and B would be considered for Item Y (if the threshold were 10). Depending on the threshold specified, some, all or none of the bidders would be considered for item Z. The universe of bidders for each item is noted in bold.

Demonstrative Auction Table as handled by Invention of Claim 51

ITEM	BIDDER		
	A	B	C
X	10 (1)	5 (2)	8 (3)
Y	15 (2)	10 (1)	3 (1)
Z	3 (3)	2 (3)	1 (2)

In contrast, for the invention of claim 51, the universe of bidders for each item are again noted in bold, and it can be seen that they are quite different from Aggarwal. In the table above, even though the exact same bid prices are provided, the respective rankings specified by the bidders are also noted in parentheses and considered during the auction process. Thus, in the handling of the auction process, only Bidder A is considered for item X; for item Y, Bidders B and C are initially considered. No bidders are initially considered for item Z, as none has specified it as a highest rank.

It can be seen quite clearly from this simple example that the inventive process of claim 51 is quite different, in that the primary determinant in determining a universe of bidders for an item is bid rank, not just bid price. Again, it should be noted that embodiments of the present invention may also specify a threshold in determining which

bidders are considered for an item (ala Aggarwal), even if such bidders have identified a bid for such item as their highest.

For these reasons the Applicant submits that the rejections should be reversed.

Dependent claims 52 - 56

Dependent claims 52 - 56 should be allowable for at least the same reasons as claim 56, and based on the other arguments advanced above for claims with like limitations.

E. Independent claim 57 and claims 58 – 64 depending therefrom

Independent method claim 57 should be allowable for at least the same reasons as set out above for claims 1, 37 and 51, particularly the discussion pertaining to bids, bid rankings and active bids. Note that the Examiner has specifically applied FIG. 3/310 and FIG. 4/420 of Aggarwal against this claim, but the same reasoning as above applies. This part of Aggarwal does not address the key limitations of the claim.

Dependent claims 58 - 64

Dependent claims 58 - 64 should be allowable for at least the same reasons as claim 57, and based on the other arguments advanced above for claims with like limitations.

F. Independent claim 65 and claims 66 – 70 depending therefrom

Independent method claim 65 should be allowable for at least the same reasons as set out above for claims 1, 37, 51 and 57, particularly the discussion pertaining to bids, bid rankings, active bids and mutually exclusive.

Dependent claims 66 - 70

Dependent claims 66 - 70 should be allowable for at least the same reasons as claim 65, and based on the other arguments advanced above for claims with like limitations.

G. Independent claim 76 and claims 77 – 80 depending therefrom

Independent claim 76 is a system claim. Nonetheless it recites a number of limitations in common with the method claims already discussed above, and should be allowable for the same reasons. Thus, the discussion above concerning the bid, bid ranking and mutually exclusive limitations is incorporated here as well for this claim.

Dependent claims 77 – 80

Dependent claims 77 -80 should be allowable for at least the same reasons as claim 76, and based on the other arguments advanced above for claims with like limitations.

H. Independent claim 81

Independent claim 81 is a system claim. Nonetheless it recites a number of limitations in common with the method claims already discussed above, and should be allowable for the same reasons. Thus, the discussion above concerning the bid, bid ranking and the like is incorporated here as well for this claim.

I. Independent claim 85 and claims 86 – 87 depending therefrom

Independent claim 85 is drawn to an electronic auction program. Nonetheless it recites a number of limitations in common with the method claims already discussed above, and should be allowable for the same reasons. Thus, the discussion above concerning the bid, bid ranking, active bids and mutually exclusive limitations is incorporated here as well for this claim.

Dependent claims 86 - 87

Dependent claims 86 - 87 should be allowable for at least the same reasons as claim 85, and based on the other arguments advanced above for claims with like limitations.

J. Independent claim 94

Independent claim 94 is a system claim. Nonetheless it recites a number of limitations in common with the method claims already discussed above, and should be allowable for the same reasons. Thus, the discussion above concerning the bid, bid ranking and mutually exclusive limitations is incorporated here as well for this claim.

Dependent claims 95 - 102

Dependent claims 95 - 102 should be allowable for at least the same reasons as claim 94, and based on the other arguments advanced above for claims with like limitations.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

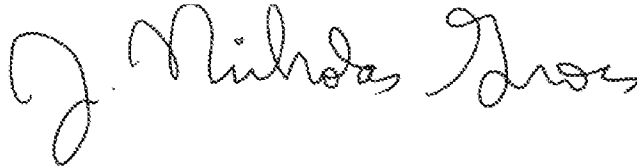
IX. EVIDENCE

No additional evidence pursuant to §§ 1.130, 1.131 or 1.132 or entered by or relied upon by the Examiner is being submitted.

X. RELATED PROCEEDINGS

No related proceedings are referenced herein, nor are copies of decisions in related proceedings being provided, as there are none. Accordingly, no Appendix is included.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Nicholas Gross". The signature is fluid and cursive, with the first name "J." being small and the last name "Gross" being larger and more prominent.

J. Nicholas Gross
Registration No. 34,175
Attorney for Applicant(s)

October 3, 2007
2030 Addison Street
Suite 610
Berkeley, CA 94704
510-540-6300
510-540-6315 (fax)

APPENDIX A

COMPLETE LISTING OF CLAIMS IN APPLICATION

1. (Previously presented) A method of processing bid information for an electronic auction comprising the steps of:
 - (a) providing a database of items available for auction;
 - (b) receiving a set of bids from one or more bidders for a corresponding set of items selected from said database, each bid in said set of bids including at least a bid price and a bid ranking specified by a bidder for an item;wherein said bid ranking from said bidder for an item represents a desired order in which a bid is to be resolved in the electronic auction compared to any other bids made by such bidder for other items in said database of items;
further wherein said bidder can specify that a set of ranked bids submitted by such bidder for a set of items should be treated as mutually exclusive, such that the electronic auction determines at most a single item to be awarded to said bidder from said set of ranked bids by correlating a ranking relationship between separate items bid on by said bidder.
2. (Original) The method of claim 1, wherein a set of bids from any particular bidder each include a unique bid ranking for each of said corresponding set of items.
3. (Original) The method of claim 1, further including a step (c): providing a maximum bid price for each bid, and an auto-bid indicator for raising said bid price as needed until said maximum bid price is reached.
4. (Original) The method of claim 1, further including a step (c): monitoring a status of the electronic auction, including a high bid for an item, and information relating to other conditional bids for said item.
5. (Original) The method of claim 1, further including a step (c): selecting a guaranteed purchase option for an item so that said item is purchased without undergoing further processing in the electronic auction.

6. (Previously presented) A method of monitoring bid information for an electronic auction comprising the steps of:

- (a) retrieving a set of items from an auction database in accordance with a specified search criteria;
- (b) displaying said set of items;
- (c) for each item in said set of items, displaying a current highest unconditional bid price specified by a bidder and information relating to any conditional bids specified by other bidders for said item;

wherein said conditional bids are not considered by an auction processing engine until and unless they become unconditional bids during an auction period associated with said item.

7. (Original) The method of claim 6, wherein said set of items correspond to inventory to be auctioned during a common auction period.

8. (Original) The method of claim 6, wherein said information relating to said conditional bids includes a numerical value indicating a number of said conditional bids having a bid price equal to or exceeding said highest unconditional bid price and/or a minimum bid price for said item.

9. (Original) The method of claim 6, wherein said items correspond to access rights to an entertainment facility.

10. (Original) The method of claim 9, wherein said entertainment facility is a golf course, and said items are golf tee times at said golf course.

11 - 36 (Canceled)

37. (Previously presented) A method of conducting an electronic auction comprising the steps of:

- (a) compiling a database of items available for auction;
- (b) grouping said items based on a common auction period to create a set of common items available to a plurality of purchasers for bidding;
- (c) receiving bids for said set of common items from said plurality of purchasers, said bids including at least a bid price and a bid ranking specified by a purchaser for an item, said bids being comprised of separate sets of mutually exclusive bids from each of said plurality of purchasers for separate and mutually exclusive items;
- (d) processing said separate sets of mutually exclusive bids based on both said bid price and said bid ranking specified by said purchaser for said set of common items to determine winning bids for each item in said set of common items by correlating a ranking relationship between bids for separate items made by such purchasers.

38. (Original) The method of claim 37, wherein each of said plurality of users receives at most one winning bid for said set of common items.

39. (Original) The method of claim 37, wherein a winning bid for an item in said set of common items is determined by comparing bids submitted by purchasers in an order determined by said bid ranking submitted by said purchasers for said item.

40. (Previously presented) The method of claim 37, wherein said electronic auction for an item proceeds in a sequence determined by examining highest ranked bids in said separate sets of bids submitted for said item by purchasers, and not by reference to a highest bid price offered for said item.

41. (Original) The method of claim 37, further including the following steps: (e): notifying a first purchaser when a highest ranked bid from said first purchaser is determined to be not a winning bid for an item; (f) permitting said first purchaser to increase an amount of said bid price for said item within a predetermined time period; (g) notifying a second purchaser that their highest ranked bid is a winning bid when said first purchaser does not increase their bid price within said predetermined price period.

42. (Previously presented) The method of claim 37, wherein said winning bids can be determined even before an end of said common auction period by giving purchasers an immediate purchase option.

43. (Previously Amended) The method of claim 37, wherein said bid prices for said separate sets of mutually exclusive bids for said set of common items, but not said bid rankings, are visible to said plurality of purchasers during said common auction period.

44. (Previously presented) A method of conducting an electronic auction of a group of items within a predetermined auction time period, comprising the steps of:

- a) receiving a plurality of bids from a plurality of potential purchasers, said plurality of bids each including a bid price for an item in the group and a bid ranking specified by a purchaser for said item;
- b) examining said bids to create a set of active bids for said item, said set of active bids being comprised only of bids having a highest bid ranking specified by a purchaser for said item and corresponding to a subset of said plurality of bids from a subset of said plurality of potential purchasers;
- c) creating an ordered set of active bids for said item based on a bid price provided for said bid;
- d) determining a minimum winning bid for said item by examining said ordered set of active bids;
- e) notifying a corresponding one potential purchaser from said subset of potential purchasers when an associated active bid for said item from said potential purchaser has an associated active bid price below said minimum winning bid;
- f) setting a selected active bid in said ordered set of active bids as a winning bid for said item when said selected active bid exceeds said minimum winning bid;

wherein a potential purchaser can specify that any bids be treated as mutually exclusive so that only one of said bids is satisfied for said potential purchaser by correlating a ranking relationship between separate items bid on by such potential purchaser.

45. (Original) The method of claim 44, further including a step: (e)': dropping said associated active bid from consideration when said one potential purchaser does not increase said associated active bid price within a predetermined time period.

46. (Previously amended) The method of claim 44, further including a step (g): selecting a next highest ranking bid specified by a potential purchaser as an active bid for a different item in the group for those potential purchasers not obtaining said winning bid for said item.

47. (Original) The method of claim 44, wherein during step (d), a minimum price set by a seller of said item is considered to determine whether a minimum winning bid exists.

48. (Original) The method of claim 44, wherein during step (f), a potential purchaser is notified of said winning bid prior to an expiration of the predetermined auction period if no other active bids exist for said item.

49. (Original) The method of claim 44, wherein during step (b), a set of active bids is created for each of the items in the group, so that all of the items in the group are auctioned substantially simultaneously.

50. (Previously presented) The method of claim 44, wherein the electronic auction is conducted such that a potential purchaser can provide a bid for more than one item, and for items having different auction expiration periods, but only receives a single winning bid at most for items having different auction expiration periods.

51. (Previously presented) A method of conducting an electronic auction for an item comprising the steps of:

(a) receiving a plurality of bids from a plurality of potential purchasers for the item, said plurality of bids each including a bid price and a bid ranking specified by the purchasers for the item;

(b) sorting said plurality of bids to form a set of active bids for the item, said set of active bids for the item including only those bids in which a potential purchaser designated said bid for said item with a highest bid ranking among all bids submitted by said potential purchaser;

(c) determining a winning bid for said item by referring only to said set of active bids associated with said item.

52. (Original) The method of claim 51, wherein during step (c), the winning bid is not necessarily determined by reference to which of said plurality of bids has a highest bid price for a respective one of the group of items.

53. (Original) The method of claim 51, wherein any bids from a potential purchaser include at least one unconditional bid for at least one item, and any other bids from said potential purchasers for other items are conditional bids.

54. (Previously presented) The method of claim 51, wherein each potential purchaser must provide a bid and bid ranking for each item in the group of items.

55. (Original) The method of claim 51, wherein at most only one bid from said potential purchaser is matched with an item, regardless of a number of bids provided by said potential purchaser for items in the group.

56. (Original) The method of claim 51, wherein each of said plurality of potential purchasers can submit more than one bid, but can receive at most only one winning bid for a single item from the group of items.

57. (Previously presented) A method of conducting an electronic auction for an item comprising the steps of:

- (a) identifying a set of highest ranked bids from bids made by bidders for the item; wherein a highest ranked bid corresponds to a bid specified by a bidder as a highest ranked bid compared to bid rankings specified by a bidder for other bids made by said bidder;
- (b) designating said set of highest ranked bids as active bids for said bidders;
- (c) determining whether any of said active bids are a potential winning bid for the item by comparing said active bids against each other and any previously determined winning bid;
- (d) designating any active bid that is a potential winning bid as a winning bid;
- (e) deleting any active bids that are not designated as a winning bid;
- (f) repeating steps (c) to (e) during an auction period until no active bids remaining that are higher than said winning bid.

58. (Original) The method of claim 57, further including a step (d)': notifying a bidder if an active bid for said bidder is not a preliminary winning bid, and specifying a re-bid period for said bidder to increase said active bid.
59. (Original) The method of claim 58, further including a step (e)': receiving a new active bid from a bidder during said re-bid period, which new active bid has a higher bid price than an earlier active bid from said bidder.
60. (Original) The method of claim 58, further including a step (g): designating a next highest ranked bid from said bidder as an active bid for another item when said bidder does not increase said active bid during said re-bid period.
61. (Original) The method of claim 57, wherein during step (b), any active bids for an item are designated without regard to a bid price of said bids.
62. (Original) The method of claim 57, wherein a plurality of items, each with a set of corresponding active bids, is processed at the same time to determine a plurality of winning bids.
63. (Original) The method of claim 57, wherein said winning bid is a highest bid price taken from said active bids, not a highest bid price taken from all bids on said item.
64. (Previously presented) The method of claim 57, wherein each bidder can submit a plurality of bids and associated bid rankings for a plurality of items, but at most only one of said bids is declared a winning bid.

65. (Previously presented) A method of conducting an auction comprising the steps of:

- a. receiving a listing of a plurality of mutually exclusive items from a plurality of sellers;
- b. receiving a plurality of ranked bids from a plurality of users on said plurality of mutually exclusive items;

wherein each user submits a plurality of mutually exclusive bids so that such user is given an option of only securing one of such mutually exclusive items based on correlating a ranking relationship between said plurality of ranked bids made on separate items bid on by such user;

- c. identifying a plurality of highest ranked bids, said highest ranked bids being specified by each of said plurality of users for one of their bids in their plurality of mutually exclusive bids;
- d. tagging said plurality of highest ranked bids as active bids;
- e. using only said active bids to determine a plurality of preliminary winning bids for said plurality of mutually exclusive items;
- f. tagging said plurality of preliminary winning bids;
- g. eliminating all non-winning bids;
- h. identifying a plurality of next highest ranked bids as specified by said plurality of users for each of said plurality of users not obtaining a winning bid;
- i. designating said plurality of next highest ranked bids as active bids;
- j. comparing only said active bids and said winning bids;
- k. identifying a new preliminary winning bid for each of the plurality of mutually exclusive items and tagging said new preliminary winning bid;
- l. processing said plurality of ranked bids during a bidding period until all of said plurality of users have either a winning bid or no remaining active bids;
- m. transmitting the results of the auction to said plurality of users.

66. (Original) The method of claim 65, wherein said ranked bid is made to purchase a mutually exclusive item usable by a group of two or more individuals.

67. (Original) The method of claim 65, wherein said plurality of ranked bids are unconditional bids.

68. (Original) The method of claim 65, wherein new ranked bids may be submitted any time before an end of said bidding period.

69. (Original) The method of claim 65, wherein a notice is conveyed to a user if an associated user current active bid is designated a non-winning bid, said notice giving a prescribed time frame to increase said non-winning bid.

70. (Original) The method of claim 69, wherein said non-winning bid is declared a non-active bid if said user does not increase said bid during the prescribed time frame.

71 – 75 (Canceled)

76. (Previously presented) A system for conducting an electronic auction of items comprising:

- (a) an auction controller accessible by a number of bidding computing systems;
- (b) an auction inventory database accessible by said auction controller, and being adapted to store identifying information for the items; and
- (c) an auction bid database accessible by said auction controller, and being adapted to store information for bids on the items, each of said bids including both a bid price and a bid ranking specified by a bidder for an item, said bid ranking corresponding to a desired order in which a bid is to be resolved compared to any other bids made by such bidder for other items in said database of items;

said auction controller being configured such that it processes said bids for said items in accordance with both said bid price and said bid ranking specified by a bidder for said items and such that said bidder's ranked bids for any of the items can be treated as mutually exclusive by correlating a ranking relationship between ranked bids made on separate items bid on by such bidder.

77. (Original) The system of claim 76, further including an e-mail processor for notifying bidders of results of the electronic auction.

78. (Original) The system of claim 76, further including an administrative computing device for performing administrative tasks for said auction controller.

79. (Original) The system of claim 76, wherein said bidding computing systems are connected through a network to said auction controller.

80. (Original) The system of claim 76, wherein all of the items are auctioned at the same time.

81. (Previously presented) A system for conducting an electronic auction of items comprising:

- (a) an electronic auction file for storing information concerning auction items;
- (b) an electronic bid file for storing a set of bids for a corresponding set of items selected from said auction file, each bid in said set of bids including at least a bid price and a bid ranking specified by a bidder for an item;
- (c) an electronic auction processor for processing said set of bids based on both said bid price and said bid ranking specified by bidders for said corresponding set of items to determine if there is at least one winning bid for one of said corresponding set of items; and

wherein a single bidder can bid on more than one item in the electronic auction, but said electronic auction processor can be programmed to only generate at most a single winning bid for said single bidder by correlating a ranking relationship between bids made on separate items bid on by such single bidder.

82 – 84 (Canceled)

85. (Previously presented) An electronic auction program for processing auction bids for an item comprising:

(a) a first program portion for identifying a set of highest ranked bids from bids made by bidders for the item, and for designating said set of highest ranked bids as active bids for said bidders;

wherein a highest ranked bid from a bidder corresponds to a bid specified by the bidder as a highest ranked item compared to rankings for other items which bidder is bidding on;

(b) a second program portion for determining whether any of said active bids are a potential winning bid for the item by comparing said active bids against each other and any previously determined winning bid;

(c) a third program portion for designating any active bid that is a potential winning bid as a winning bid;

(d) a fourth program portion for deleting any active bids that are not designated as a winning bid;

(e) a fifth program portion for coordinating said first program portion, said second program portion, said third program portion and said fourth program portion during an auction period until no active bids remain that are higher than said winning bid;

wherein only bidders for which the item is a highest ranked bid are considered for potential winning bids on the item.

86. (Original) The electronic auction program of claim 85, wherein the electronic auction program executes from a computing system accessible by a plurality of user computing devices adapted to enter said bids.

87. (Original) The electronic auction program of claim 85, wherein the computing system is a server accessible on the internet, and said user computing devices include web browsers for interacting with web pages on said server for entering said bids.

88 – 93 (Canceled)

94. (Previously presented) An electronic auction system comprising:

- a. means for entering auction inventory items; and
- b. means for storing said auction inventory items; and
- c. means for reviewing said auction inventory items; and
- d. means for querying said auction inventory items to create selected auction inventory items satisfying selection criteria of a potential bidder;
- e. means for entering a bid amount and a bid ranking specified by a bidder for one or more of said selected auction inventory items to create one or more bid entries;
- f. means for storing said bid entries;
- g. means for processing said bid entries to determine winning bids for said auction inventory items, said winning bids being based on both said bid amount and said bid ranking;

wherein a bidder can specify that a set of bids submitted by such bidder for a set of items in said auction inventory items should be processed as mutually exclusive by specifying that a ranking relationship should be correlated between separate bids made by such bidder on separate items;

- h. means for transmitting a notification associated with said winning bids to one or more bidders.

95. (Original) The system of claim 94, wherein bid entries for an auction item from any individual bidder consist of at least one unconditional bid.

96. (Original) The system of claim 94, further comprising means for transmitting a notice to a bidder that their bid entries do not include a winning bid.

97. (Original) The system of claim 94, further comprising a means for permitting a bidder who has been outbid for an auction item to increase a bid amount of a bid entry.

98. (Original) The system of claim 94, further comprising a means for coordinating payment of any winning bids.

99. (Original) The system of claim 94, further comprising a means for observing a status of any auctions.

100. (Original) The system of claim 94, further comprising a means to store user information.

101. (Original) The system of claim 94, further comprising a means to store vendor information.

102. (Original) The system of claim 94, further comprising a means to store and retrieve historical auction results.